



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/993,048	11/13/2001	Lynn P. Nelles	AFB-SNF-1	8133
7590 06/08/2004			EXAMINER	
Patrick D. Kelly 11939 Manchester #403 St. Louis, MO 63131			WONG, LESLIE A	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 06/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/993,048

Applicant(s)

NELLES ET AL.

Examiner

Leslie Wong

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 14, 15 and 17-23 is/are pending in the application.
- 4a) Of the above claim(s) 1-6, 14, 15 and 17-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Art Unit: 1761

Applicant's election with traverse of Group II, claims 7-10 in the reply filed on March 8, 2004 is acknowledged. The traversal is on the ground(s) that the product claimed cannot be made by another process. This is not found persuasive because the product as claimed can be made by another and materially different process such as chemical synthesis.

The requirement is still deemed proper and is therefore made FINAL.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 9 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant does not specifically teach what is encompassed by "hydrolytic fermentation of at least one type of cohesive animal tissue."

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 1761

Claim 7 is rejected under 35 U.S.C. 102(b) as being anticipated by Chen et al (US Patent No. 5,079,017).

Chen et al teach a flavorant obtained by heating an oil/fat and a sulfur-containing compound (see entire patent, especially claims 1 and 14).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al (US Patent No. 5,079,017) in view of Boudreau et al (US Patent No. 4,267,195) and Paluch (US Patent No. 6,312,746).

Chen et al disclose a flavorant obtained by heating an oil/fat and a sulfur-containing compound, such as cysteine (see entire patent, especially claims 1 and 14).

The claims differ as to the presence of a second palatability enhancer and the specific use of the product in an animal food.

Boudreau et al disclose it is well known that cysteine (nitrogen and sulfur containing) serves to increase palatability for dogs (see entire document, especially the abstract).

Paluch discloses conventional pet food components including hydrolyzed meat protein (see entire patent, especially Table 2).

Art Unit: 1761

It would have been obvious to a person of ordinary skill in the art, at the time the invention was made, to use the flavorant of Chen et al in an animal food product because the use of nitrogen/sulfur containing compounds in pet foods is conventional in the art.

Applicant is using known components to obtain expected results. All of the claimed components are well-known in the art and used for their art-recognized function.

Attention is invited to In re Levin, 84 USPQ 232 and the cases cited therein, which are considered in point in the fact situation of the instant case, and wherein the Court stated on page 234 as follows:

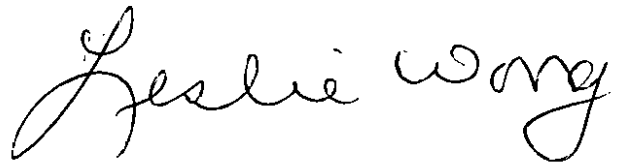
This court has taken the position that new recipes or formulas for cooking food which involve the addition or elimination of common ingredients, or for treating them in ways which differ from the former practice, do not amount to invention, merely because it is not disclosed that, in the constantly developing art of preparing food, no one else ever did the particular thing upon which the applicant asserts his right to a patent. In all such cases, there is nothing patentable unless the applicant by a proper showing further establishes a coaction or cooperative relationship between the selected ingredients which produces a new, unexpected, and useful function. In re Benjamin D. White, 17 C.C.P.A (Patents) 956, 39 F.2d 974, 5 USPQ 267; In re Mason et al., 33 C.C.P.A. (Patents) 1144, 156 F.2d 189, 70 USPQ 221.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Wong whose telephone number is 571-272-1411. The examiner can normally be reached on Tuesday-Friday.

Art Unit: 1761

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in cursive script that reads "Leslie Wong".

Leslie Wong
Primary Examiner
Art Unit 1761

LAW
June 4, 2004